



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 19, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0046

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001(2) Employees must adhere to laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	5.001(10) Employees shall strive to be professional	Not Sustained (Inconclusive)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001(2) Employees must adhere to laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	5.001(10) Employees shall strive to be professional	Not Sustained (Inconclusive)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that she was raped by a former SPD officer while the officer's unidentified partner held her down.

SUMMARY OF INVESTIGATION:

The Complainant initiated a complaint with OPA in which she alleged that she was sexually assaulted by Named Employee #1 (NE#1) in 1977. At the time, she had just begun to engage in sex work. NE#1 was a Detective assigned to the Vice Unit and generally worked at night. The Complainant said that NE#1 picked her up one night and they went to a parking lot by the Greyhound Bus Station. NE#1 identified himself as a police officer, and the Complainant said she needed to go home. The next day, NE#1 picked up the Complainant again. She recalled that NE#1 would wear different hats in order to disguise his appearance.

The Complainant recalled that one night she was working on a street between Pike and Union. She saw two men in a van that was dark green or black. The passenger, Named Employee 2 (NE#2), displayed a badge and said they wanted to talk to the Complainant. The Complainant described NE#2 as a Black male. When the Complainant got in the van, she recognized the driver as NE#1. The Complainant was holding an emery board, and NE#2 took it after recognizing that it could be used as a weapon. The Complainant sat between NE#1 and NE#2. She believes the van did not have windows but said there were doors in the back. NE#1 drove them to an unknown location on the waterfront and the vehicle stopped. At some point, the Complainant was in the back of the van, though she does not recall how she got there. She also remembers that the back of the van was empty except for a tire.



The Complainant at first stated that both NE#1 and NE#2 had raped her. She later said that it was just NE#1, who had laid on top of her diagonally. The Complainant recalls that she fought back by pushing NE#1, but NE#2 held her down and told her to lay still. The Complainant stated that NE#1 raped her, stopping after he ejaculated. At one point her clothing was removed, but she did not recall how. The Complainant recalled NE#1 calling her “bitch” and “whore” and stated that he had told her to stay off the streets, and that if she did not listen this would happen.

She stated that NE#1 and NE#2 then exited the van through the back doors. The van travelled up one of the hills in downtown Seattle. NE#2 got into the cargo area of the van as it was moving slowly. The Complainant stated that she was pushed from the van and her clothes were thrown out of the back. The Complainant recalled putting her clothes back on and seeing that she had a few minor scrapes. She was then picked up by a friend who usually drove around the city, and she likely continued to work that night.

In April of 2019, the Complainant received a phone call from an old friend, Witness #1 (W#1), who worked with her at the time of the rape. W#1 has an adult daughter, Witness #2 (W#2). W#1 never knew who W#2’s biological father was. W#1 told the Complainant that W#2 wanted to find out his identity, and they used a genealogy website that indicated NE#1 was the father. W#2 contacted NE#1, who agreed to a DNA test, which also confirmed that he was her biological father. NE#1 told W#2 he did not remember how she was conceived. He said that he broke his neck in an accident, which has caused him memory issues.

W#1 was interviewed regarding the Complainant’s allegations. She recalled that NE#1 had picked her up once while she was engaged in sex work. She stated that NE#1 drove a dark blue vehicle. W#1 said there was a friendly German Shepherd in the back seat. She also stated that NE#1 identified himself by his first name.

After W#1 and NE#1 negotiated a “date,” he drove them to a motel on Aurora Avenue. They entered the motel room and had intercourse. Afterward, NE#1 displayed his badge and gun to W#1. He said he was an officer and took his money back from her. W#1 recalled she was scared and thought she would get arrested. She was then dropped off by NE#1 in some part of downtown Seattle.

W#2 was interviewed regarding the Complainant’s allegations. She stated that she was able to locate much of her family through Ancestry.com, which showed there was a paternal match with NE#1. W#2 also described her relationship with her mother as stressful. She does not know if she believes W#1’s recollection because her stories change. When W#2 met up with NE#1 and showed him a picture of W#1, he said he had no recollection of her.

The Complainant spoke with an attorney, Witness #3 (W#3), in either 1998 or 1999 about the alleged assault. When interviewed, W#3 recalled this conversation and that the Complainant had told him that the officers had taken a nail file from her, assaulted her, and threw her from a van.

After receiving this complaint from the Complainant, OPA referred the case for criminal investigation. A Detective assigned to the Sexual Assault Unit was assigned to case. As part of the criminal investigation, the Detective interviewed NE#1. NE#1 had difficulty remembering the details of the Complainant’s allegations due to an injury he purportedly sustained in an accident in 1988. He said he broke his neck and was partially paralyzed. With respect to the identity of NE#2, he could only recall working with one Black male coworker. When informed of the Complainant’s allegations, he responded that it was “crazy.” He stated that he did not knowingly date any prostitutes, but that he did date a lot of women who he met at the Seattle Center, bars, and other places. NE#1 also



stated he did not recall ever owning a dog or using one on an operation, nor did he recall going to motels on Aurora when he worked in Vice. He acknowledged, however, that he fathered a daughter with W#1.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 – Standards and Duties 2. Employees must adhere to laws, City Policy and Department policy

SPD Policy 5.001(2) states that employees must adhere to laws, city policy and department policy, which includes federal laws, state laws, and laws of the City of Seattle. (SPD Policy 5.001(2)). Were OPA able to prove that NE#1 committed the sexual assault alleged here, that would violate the law and consequently, this policy.

OPA finds the account provided by the Complainant to be credible. This is not diminished by the time that passed between the rape and her reporting, as OPA recognizes the difficulty of bringing forward allegations of this nature.

In making this assessment, OPA notes that the Complainant's allegations against NE#1 contain significant details, and they match those she shared with W#3 about twenty years after the incident occurred. The Complainant's account is also buttressed by W#2's allegations, including her substantially similar description of the van NE#1 drove and her recitation of the conduct engaged in by NE#1, which contains some of the same elements as what the Complainant experienced.

To the contrary, OPA had significant questions with NE#1's account. For example: his curious lack of any recollection based on a purported injury; his failure to believably explain away two similar allegations of sexual assault; and the fact that he indisputably fathered a child with a sex worker and that this occurred while he was employed by SPD.

However, given the time that has passed since the rape reported by the Complainant, there is no physical or documentary evidence relating to this case. Moreover, OPA could not identify NE#2 and, thus, could not determine what information he possessed, if any, about the incident. This eliminated the only witness to the conduct other than the Complainant and NE#1.

Ultimately, even though OPA believes the Complainant and questions the veracity of NE#1's account, there is insufficient evidence to permit OPA to reach a conclusive finding here. Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #1 - Allegation #2

5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

For the same reasons as above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**



Named Employee #2 - Allegation #1

5.001 – Standards and Duties 2. Employees must adhere to laws, City Policy and Department policy

Despite interviewing former officers who were assigned to NE#1's unit, OPA was unable to identify NE#2. Moreover, the one individual who may have matched the description of NE#2, passed away prior to the commencement of this investigation. Given this, OPA was unable to determine whether NE#2 violated the policies set forth in Allegations #1 and #2 and recommends that both allegations be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #2 - Allegation #2

5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**